

Replacement of Section 9.4 of the *“Guidelines for Preparing Agreements”*

9.4 EXPORTING HARDWARE VIA SEPARATE LICENSE IN FURTHERANCE OF AN AGREEMENT (AG, TA, MA, or DA)

DEFINITION: “Hardware exported in furtherance of an agreement” – The export by the agreement holder or another U.S. signatory of the agreement of defense articles identified within the scope of the agreement. This type of export must be included in the scope of the agreement and the value of the export will be counted against the value of hardware exports authorized under the agreement.

DEFINITION: “Hardware exported in support of an agreement” – The export by any U.S. party of defense articles which indirectly relates to the agreement. The **“in support”** statement acts, in part, to frame the purpose/end-use of the articles being exported so the license adjudicators better understand the overall effort. This type of export does not need to be reflected in the scope of the agreement and the value of the export will **not** be counted against the value of hardware exports authorized under the agreement. In most circumstances, an **“in support”** license should not list the agreement holder or other U.S. signatories of the agreement as the source or manufacture of the defense article being exported.

Agreement Considerations. When shipment of hardware “in furtherance” of an agreement via separate license (DSP-5, DSP-61, DSP-73, DSP-85) is anticipated, the hardware must be identified (described) in the agreement under ITAR 124.7(1) and by value in 124.12(a)(6) of the Transmittal Letter. The more details provided in the agreement on the hardware, the quicker the review process for the license. If either the 124.7(1) description or the 124.12(a)(6) valuation is missing, then a proviso will be given to the applicant stating no hardware is authorized for export via a separate license until the agreement is amended. If hardware is properly described and valued, then based on the information provided in the agreement/amendment application, DDTC will provide a proviso in the approval letter similar to:

“5. Export or temporary import of hardware against this agreement by separate license is authorized. If used, separate license must reference this agreement and must not exceed \$XXXX over the life agreement to include shipments to date. Export of hardware against this agreement under the provisions of ITAR 22 CFR 123.16(b)(1) is not authorized. Hardware authorized for export or temporary import is identified in XXX of the Agreement, as amended. **This proviso does not limit the use of DSP-73s and 22 CFR 123.4 for repair and replacement purposes.**”

Requirements for Licenses “In Furtherance” of an Agreement.

- The agreement/amendment authorizing the subject hardware MUST be approved PRIOR to submission of the hardware license request. License requests prematurely submitted are subject to Return Without Action.
- The license request MUST be submitted by the agreement holder or another U.S. signatory of the identified agreement.
- The end-user identified on the license request MUST be a foreign licensee (signatory) or end-user on the subject agreement.
- The first foreign consignee (not including foreign intermediate consignees) to receive the subject hardware MUST be a foreign licensee (signatory) or end-user on the subject agreement.
- The purpose block of the license request MUST include the words “**In Furtherance of TA/MA/DA/AG XXXX-XX**” on the very first line.
- The license request must be submitted with following support documentation:
 - Purchase Order, Letter of Intent, Contract, or Request for Goods from the foreign party to the applicant. This documentation MUST identify the relevant agreement. The dollar value of defense articles does not need to be provided.
 - DSP-83 for significant military equipment (SME). If original was provided with the agreement, applicant must upload a copy with the license request.
 - Letter of Explanation from the **Holder of the Agreement**, signed by an empowered official, using the format provided in the attached example. The information in this letter is requested pursuant to 22 CFR 122.5.
- In cases where the hardware is adequately described in the text of the agreement and where hardware value remains to support the proposed export, the license request will normally not require any additional staffing.

Sample Letter of Explanation

Agreement Holder Letterhead

Month DD, YYYY

In reply refer to:
XXXXXX

PM/DTC Applicant Code: M-

Company Tracking Code (if applicable)

Mr. Director Name, Director
Defense Trade Controls Licensing
U.S. Department of State
PM/DTC, SA-1
2401 E Street, N.W., Suite 1200
Washington, DC 20522-0112

Subject: Supplementary Explanation of Transaction Accompanying DSP 5/61/73/85 for
Export/Import "In Furtherance" of AG/TA/MA/DA XXXX-XX

References: List any applicable references

Dear Mr. Davis,

(Insert Applicant Name) requests approval to permanently/temporarily (choose one)
export/import (choose one) (general description of the hardware) to (identification of the foreign
consignees) in furtherance of AG/TA/MA/DA XXXX-XX, as amended. To assist in your
review of the license request, the following information is provided:

1. Agreement Execution History:

Base Agreement:	provide date of execution or state none if not yet concluded
Amendment A:	same
Continue	as necessary to cover all prior amendments.

2. Hardware Proviso (N/A for DA): The most recent hardware proviso is Proviso # (insert
proviso #) from AG/TA/MA XXXX-XX(insert amendment letter, if any) and it stated:

"5. Export or temporary import of hardware against this agreement by separate
license is authorized. **If used, separate license must reference this agreement
and must not exceed \$XXXX over the life agreement to include shipments to
date.** Export of hardware against this agreement under the provisions of ITAR
22 CFR 123.16(b)(1) is not authorized. Hardware authorized for export or
temporary import is identified in **XXX** of the Agreement, as amended. **This
proviso does not limit the use of DSP-73s and 22 CFR 123.4 for repair and
replacement purposes.**"

Sample Letter of Explanation

3. Hardware Identification: The hardware that is the subject of this license request can be found in (the base agreement/amendment ?) at (insert location) and reads as follows:

Insert text of the agreement or if lengthy make reference to it by attachment. In the PDF upload of the agreement/amendment text, it is helpful if the applicant identifies the specific hardware that is the subject of this request with highlighting or some other identification markings within the PDF file.

4. Valuation (N/A for DA):

- a. \$xxx,xxx in licenses have been approved “In Furtherance” of this agreement to date. (If this is the first request, state, “This is the first request under this agreement.”)
- b. \$xxx,xxx is available for this and future export requests.
- c. A summary table of all prior exports with associated license numbers can be found at Attachment C. (If this is the first request, state, “This is the first request under this agreement.”) (The summary table can be provided in the text of the letter if there are less than 10 prior approvals. For more than 10 prior approvals, please include in a PDF or Excel attachment to the license request).
- d. (MA Only) This manufacturing license agreement authorizes production of \$xxx,xxx,xxx (insert value) in hardware. As of the last sales report, dated (insert date), the total of all production was reported as \$xxx,xxx,xxx. (insert value)

5. Certifications:

- a. I certify this license request is within the scope of the agreement, as amended, and its associated Limitations, Provisos, and Other Requirements.
- b. I certify the end-user identified on this license request is identified as a foreign licensee (signatory) or end-user on the subject agreement, and the first foreign consignee (not including foreign intermediate consignees) to receive the subject hardware is a foreign licensee (signatory) or end-user on the subject agreement.
- c. (Only if another U.S. party is applying for the license) I certify (insert U.S. Company name) is a signatory to the agreement, is authorized to submit this license request against the hardware valuation approved under this agreement, and is aware of the applicable provisos.

6. Additional Documentation: The following additional documentation is included to support this request:

- A. DTC Approval Letters: (single PDF file with all DTC approval letters)
- B. Agreement/Amendments: (a single PDF file with the text of the agreement and amendments, including attachments/exhibits/annexes)
- C. Summary Matrix of Prior Export Authorizations: (if not included above)

Sample Letter of Explanation

(If applicable) The U.S. Government point of contact familiar with the (scope of the effort) is (insert POC, office, phone number, and email if known).

If additional information is required, please contact (insert company POC, phone number, and email).

Sincerely,

Signed by an Empowered Official